

U.S. Application No. 10/669,778
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IV. REMARKS

Applicants respectfully request reconsideration of this application in view of the above amendments and the following remarks.

1. Status of the Claims

Claims 32-46 were pending in this application. Applicants have canceled Claims 46 in this response. Accordingly, Claims 32-45 are currently pending for examination on the merits.

2. Summary of the Amendments

The specification has been amended on page 1, at lines 03 to 06, to indicate the current status of the parent application, i.e., now U.S. Patent No. 6,635,618.

Claim 46 has been cancelled without prejudice or disclaimer.

Entry of these amendments is respectfully requested.

3. Objection to the Specification

The specification has been objected to for informalities. Specifically, the Examiner has indicated that the status of the parent application should be updated. In response, Applicants have amended the specification to indicate the status of the parent application. Accordingly, this objection may be withdrawn.

4. Obviousness-Type Double Patenting

Claim 46 has been rejected under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-31 in U.S. Patent No. 6,635,618; and provisionally rejected in view of Claims 32-51 in U.S. Application No. 10/436,341. While not agreeing with this rejection, in order to expedite allowance of the remaining claims in this application, Applicants have canceled Claim 46 without prejudice or disclaimer. Accordingly, this rejection may be

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withdrawn.

Additionally, Claims 32-38, 41-44 and 46 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-24 of U.S. Application No. 10/226,428. In response, Applicants submit herewith a terminal disclaimer in compliance with 37 C.F.R. §1.321(c). Accordingly, this rejection may be withdrawn.

Applicants note that the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Specifically, the courts have indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

5. Objection to the Claims

Claims 39, 40 and 45 have been objected to as being dependent upon a rejected base claim but are otherwise allowable. In view of the terminal disclaimer filed herewith, Applicants believe the base claims from which these claims depend are now allowable. Accordingly, Applicants respectfully request that this objection be withdrawn.

6. Copending Commonly-Assigned Applications

Applicants wish to bring to the Examiner's attention copending, commonly-assigned U.S. Application No. 10/926,148, filed on August 25, 2004. This application is a continuation of U.S. Application No. 10/226,428, filed August 23, 2002, which application is discussed hereinabove.

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7. Conclusion

Reconsideration of this application in view of the above amendments and remarks is respectfully requested. Should there be any issues regarding this application that can be resolved by telephone, the Examiner is respectfully requested to telephone the undersigned attorney at (650) 808-6406.

Respectfully submitted,

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